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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Report of the Secretary-General

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INTRODUCTION

1. This report is submitted pursuant to Commission on Human Rights resolution 1992/54 of 3 March 1992, paragraph 14, which requested the Secretary-General to commence the planning of a follow-up international workshop in 1993, following the World Conference on Human Rights, and to submit a report on those preparations to the Commission at its forty-ninth session.

2. The International Workshop on National Institutions for the Promotion and Protection of Human Rights, held in Paris from 7 to 9 October 1991, on which the Secretary-General reported at length to the Commission at its forty-eighth session (E/CN.4/1992/43), provided national institutions with an opportunity to describe their structures and operations, exchange experiences and alert Member States of the United Nations to the desirability of setting up such institutions. The Workshop also discussed existing and possible future forms of cooperation between such institutions and such intergovernmental organizations as the United Nations, with a view to making them more effective. Overall, it served to encourage existing national institutions to intensify their activities, where necessary, in order to provide optimum promotion and protection of human rights.

3. The main results of the Workshop were a set of guidelines on the structure and role of national institutions, which the Commission endorsed at its forty-eighth session under the heading "Principles relating to the status of national institutions", and the emergence of an international network or community of national institutions. This provides States with a frame of reference for the construction or reform of their own infrastructure for promoting and protecting human rights.

4. Building on the achievements of the Paris Workshop, consideration might be given to discussing, during the 1993 follow-up workshop, the impact the Principles have had, progress made in setting up national institutions, and how better to structure relations between institutions. The preparatory process includes dissemination of the Principles through Centre for Human Rights workshops, seminars and technical assistance projects; participation as observers by national institutions in the World Conference on Human Rights; and contacts to set up the 1993 meeting.

I. DISSEMINATION OF THE PRINCIPLES RELATING TO THE STATUS OF NATIONAL INSTITUTIONS

A. Commonwealth Workshop on National Human Rights Institutions

5. A Commonwealth Workshop on National Human Rights Institutions was held in Ottawa, Canada, from 30 September to 2 October 1992. The meeting was attended by a cross-section of "ombudsmen" from different Commonwealth countries and the host country, as well as some human rights commissioners. The Centre for Human Rights was represented by an observer.

6. The objective of the Workshop was to share expertise and experiences throughout the Commonwealth on national human rights institutions. It reviewed, inter alia, the philosophical and functional importance of national institutions in any jurisdiction, the political realities of setting up and maintaining a viable national institution, the importance of independence and resources in this context, as well as its interlinkage to international human rights instruments and the World Conference on Human Rights.

7. There was general agreement on the need for encouraging "promotional" institutions, which aim at increasing the enjoyment of human rights for individuals and groups, which would ultimately constitute a powerful force towards the development of effective institutions providing for the greater enjoyment of human rights and fundamental freedoms.

8. The discussions also focused in detail on the role and functions of the office of the ombudsman, as distinct from national human rights commissions. There was a consensus that the jurisdiction of the ombudsman was to ensure general fairness and legality in public administration, and to deal with individual complaints. National human rights commissions, on the other hand, had a wider jurisdiction and specifically focused on human rights and non-discrimination.

9. Emphasis was laid, in this respect, on the importance of Commonwealth countries' ratifying the main international human rights instruments and, in particular, the two international covenants.

10. In their recommendations the participants in the Commonwealth Workshop stressed that in the establishment and operation of national institutions, due attention should be paid to the "Principles relating to the status of national institutions", particularly in relation to:

> "The jurisdiction and functions of national institutions, dealing with the complaints, review of legislative and administrative measures, and public education and promotion of awareness of and respect for human rights;
>
> The need for national institutions to provide effective and accessible remedies in relation to complaints of violation of human rights;
>
> The need to ensure that national institutions are accessible and credible to individuals and groups in disadvantaged sections of society;
>
> The need for national institutions to be able to work with non-governmental organizations; and
>
> The possibility, where appropriate, of such institutions' monitoring national compliance with international and regional instruments."

B. Meeting of national institutions and organizations encouraging tolerance and harmony and action to combat racism and racial discrimination

11. Organized by the Centre for Human Rights in cooperation with the Australian Human Rights and Equal Opportunity Commission, this meeting is scheduled to be held in Sydney in April 1995. Its intention is to provide a better understanding of the role played by national institutions in the specific domain of action to combat racism and racial discrimination. It will bring together institutions exclusively concerned with racism and racial discrimination, and institutions with broad terms of reference in human rights matters.

12. To appreciate the importance of the meeting, it is necessary to refer to the third of the Principles relating to the status of national institutions, which lays down the responsibilities of such institutions. This states that national institutions are responsible for submitting to the Government, Parliament and any other competent body, on an advisory basis, [...] opinions, recommendations, proposals and reports on any [...] legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights. Hence national institutions are appropriate mechanisms for identifying legal means whereby modern manifestations of racism and racial discrimination can be outlawed. Many initiatives by national institutions can already be encompassed within this description.

13. These include recommendations by the Australian Government's Human Rights and Equal Opportunity Commission to amend the law and punish racist violence, following an inquiry it conducted into the subject; and the first progress report on enforcement of the French Act of 13 July 1990 prohibiting all acts of racism, anti-Semitism or xenophobia, published by the French National Consultative Commission on Human Rights in its 1991 report on action to combat racism and xenophobia, which highlighted the novel character of the Act as a means of combating racism.

14. These are just some of the many approaches to opposing racism and racial discrimination which will be discussed at the meeting under the heading "Effects of legislation on action to combat racism and racial discrimination".

C. Advisory services and technical assistance to strengthen national institutions

15. An operational tool for creating or strengthening national infrastructure to promote and defend human rights, the Advisory Services and Technical Assistance Programme is also an ideal means of disseminating the Principles relating to the status of national institutions.

16. Thus the Principles form an integral part of projects designed for the Governments of Colombia, Costa Rica, Benin, Burundi, the Russian Federation, Namibia, Poland and Sao Tome and Principe. They are used in modelling the projects and in evaluating their results.

II. PARTICIPATION AS OBSERVERS IN THE 1993 WORLD CONFERENCE ON HUMAN RIGHTS BY NATIONAL INSTITUTIONS

17. To sustain the momentum in the establishment of national institutions and to consolidate their position as leading agents in the promotion and protection of human rights, the Preparatory Committee for the World Conference on Human Rights decided, at its second session, in April 1992, to invite them to take part in the Conference as observers.

18. The intention is that representatives of national institutions should discuss matters of common interest within a subcommittee of the Conference. They would in particular evaluate the activities of existing institutions and indicate areas for possible future action; determine how the Principles relating to the status of national institutions should apply, in contrast to the current mandates and operations of such institutions; consider how existing institutions could be strengthened, and new ones established; and boost inter-institutional cooperation and establish at an international level the sort of partnership that has grown up between national institutions and the Centre for Human Rights, in order to advance the cause of human rights.

19. The secretariat of the World Conference is currently making arrangements to enable most national institutions to attend the Conference. About 100 human rights commissions, committees, councils and ombudsmen are expected to attend. The Secretary-General would, however, like to draw the Commission's attention to the need for a voluntary fund to finance participation by national institutions from developing countries.

III. VENUE OF THE 1993 FOLLOW-UP WORKSHOP

20. In accordance with Commission resolution 1992/54, paragraph 14, and Economic and Social Council decision 1992/233, and in order to begin planning in 1993 for the international workshop to follow up that held in Paris in 1991, the Secretary-General suggests holding consultations during the forty-ninth session of the Commission so that a Member State that has a national institution can offer to host and/or contribute to the organization of the workshop.